

Testimony

of the

North Carolina Medical Society

to the

Special Committee on Aging
U.S. Senate

**Re: Medical Liability in Long-Term Care: Is Escalating
Litigation a Threat to Quality and Access?**

Presented by: Lawrence M. Cutchin, MD

July 15, 2004

Good afternoon Chairman Craig, Senator Breaux, and Members of the Committee.

I'm Lawrence Cutchin, MD, president of the North Carolina Medical Society and an internist from Tarboro, North Carolina.

On behalf of the physicians of the North Carolina Medical Society, I want to extend our appreciation to this committee for allowing me the opportunity to discuss how our nation's medical liability crisis is seriously threatening access to quality health care, including medical care for patients in long term care facilities.

Long term care is an indispensable part of our health system. The continued productivity of our workers and quality of life for their families depends on the availability of long term care. Perhaps we have taken for granted that liability insurance would be available and affordable so that patients could be compensated in legitimate cases of negligent care. Today, however, the status of medical liability in North Carolina's long term care facilities has reached a crisis.

Insurance costs have skyrocketed. This has been well-documented by private actuaries whose work has been made available to the committee. North Carolina has not escaped

these problems. Premiums for some North Carolina nursing homes have skyrocketed by as much as 1800% since 1995.

Medical Mutual Insurance Company, which is the largest insurer of physicians in North Carolina, has determined that many long term care facilities have taken drastic steps to compensate for the escalating costs. Among them, negotiating contracts with their part-time medical directors shifting liability to them for purely administrative functions of the nursing home. That is, liability unrelated to the actual medical care the doctors are providing. Most professional liability policies, certainly all of the policies sold by Medical Mutual, do not cover this contractually-assumed liability. Additionally, some large nursing home chains were “sharing” one single annual limit of liability insurance of \$1 million. A physician serving as medical director for one of these nursing homes faced extraordinary additional risk exposure in the event of a lawsuit where the underinsured or uninsured nursing home is a co-defendant. To address this problem, some companies have cancelled, not renewed, or refused to cover physicians who spend a significant portion (e.g., 15%) of their professional time serving as the medical director for a nursing home. The resulting lack of doctors to fill these rolls has left some nursing homes without a medical director, placing them in violation of federal certification standards. This is an untenable situation, to say the least, that can lead to problems with access and quality of medical care to long term care patients.

Other responses to the liability crisis include reductions in staff hours, freezing wages, and reducing residents’ activities. These adaptations, together with the loss of available medical directors, certainly tend to escalate the professional risk associated with the medical care of nursing home residents, making already-reluctant physicians think twice about taking on the care of nursing home patients.

The nursing homes, physicians, and hospitals formed a coalition in late 2002 to address the medical liability crisis. Among the reforms sought by the coalition at the state level: 1) establishment of a peer review privilege to protect proceedings, records, and materials produced or considered by a quality assurance or medical review committee from discovery or use in a civil action against a nursing home; and 2) liability limitations for nursing home medical directors who might otherwise be named as a defendant in an action against a nursing home.

We believe there are solutions to this crisis. We believe the long term care system is worth saving. And we believe the United States Senate should act to reduce the excessive burden of our broken liability system on our nation’s long term care providers.

Thank you for this opportunity. I would be glad to answer any questions.